

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

<b>Application No. : 09/613,903</b>	)	<b>Title: NUCLEIC ACID LADDERS</b>
	)	
<b>Patent No. : 8,273,863</b>	)	<b>Filing Date : July 11, 2000</b>
	)	
<b>Inventors : Heather J. Jordan</b>	)	<b>Issue Date : September 25, 2012</b>
	)	
<b>Attorney Docket No. : IVGN 187.1 CON</b>	)	
	)	
<b>Group Art Unit: 1634</b>	)	

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER**  
**37 C.F.R. §1.705(d)**

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Petitioner hereby submits this Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. §1.705(d) to correct the Office's Patent Term Adjustment (PTA) calculation for U.S. Patent No. 8,273,863 (hereinafter, the "'863 patent"). This request is timely filed within two months of the issue as required under 37 C.F.R. §1.705(d).

On September 25, 2012, the '863 patent issued with a PTA of zero (0) days. The Office's calculation of 0 days of PTA was based upon 0 days of delay by the Office (0 days pursuant to 37 C.F.R. §1.703(a) and 0 days pursuant to §1.703(b) reduced by an overlap of 0 days pursuant to §1.703(f) minus 1036 days of Applicant delay pursuant to 37 C.F.R. §1.704. The 0-days Office delay under 37 C.F.R. §1.703(b) is at issue.

Based on the file history, the Application was filed on July 11, 2000. A first Notice of Appeal was filed on May 19, 2003 and the first Request for Continued Examination (RCE) was filed on November 19, 2003. A second Notice of Appeal was filed on November 23, 2009 and another RCE was filed on May 24, 2010. The patent issued on September 25, 2012. The Office incorrectly calculated a 0 day Office delay under 37 C.F.R. §1.703(b) based on the filing of the

first RCE. “[T]he time devoted to an RCE tolls the running of the three year clock if the RCE is filed within the three year period. And, put simply, RCE's have no impact on PTA if filed after the three year deadline has passed.” *Exelixis, Inc. v. Kappos*, No. 1:12cv96 (E.D. Va. Nov. 1, 2012). The first RCE was filed more than three years after the filing of the Application. The delay should therefore have been calculated from the periods July 12, 2003 (the date that is a day after the 3-year period following filing of the Application) to May 19, 2003 (the date the first Notice of Appeal was filed), November 19, 2003 (the date the first RCE was filed) to November 23, 2009 (the date the second Notice of Appeal was filed), and May 24, 2010 (the date the other RCE was filed) to September 25, 2012. This delay is 2864 days (not 0 days).

In light of the foregoing, Petitioner respectfully submits that the correct number of days of PTA is one thousand eight hundred and twenty-eight (1828) days, which is calculated from 2864 days of Office Delay (0 days pursuant to 37 C.F.R. §1.703(a) and 2864 days pursuant to §1.703(b) reduced by an overlap of 0 days pursuant to §1.703(f)) minus 1036 days of Applicant delay.

The above-captioned case is not subject to a Terminal Disclaimer.

Respectfully submitted,  
/ Phil Makrogiannis/  
Phil Makrogiannis  
Reg. No. 47,766  
AGENT FOR APPLICANT(S)

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Date: November 20, 2012